

### **Remarks**

Claims 15-24 were pending. Upon entry of this amendment, claims 15 and 20 will be amended. No claims have been canceled and no claims have been added. Therefore, claims 15-24 will be pending. Applicants reserve the right to pursue the subject matter of the originally filed claims in a subsequently filed application.

#### ***35 U.S.C. §112 (first paragraph)***

Claims 15-24 were rejected as failing to comply with the enablement requirement. Applicants disagree.

To expedite prosecution, Applicants have amended claim 15 to be directed to a pome fruit at approximately 35°F, and consequently all of the dependent claims are directed to a pome fruit that is at approximately 35°F. Similarly, claim 20 has been amended to be directed to a process that includes storing the pome fruit at approximately 35°F.

The specification clearly teaches how to make apples that include an admixture including a concentration of methyl anthranilate compound sufficient to impart a grape flavor. As stated in Applicants' Amendment of 2/24/08, the amount can be determined by one of ordinary skill in the art, and the amount will vary depending upon the pome fruit and the desired flavor. Moreover, the specification clearly teaches that the flavor is pronounced and longer lasting when the fruit is dipped in the methyl anthranilate compound and cooled to a temperature of approximately 35°F (see *e.g.* page 5, lines 11-16; page 5, lines 23-28; and page 12, lines 17-19) in comparison to room temperature fruit. Therefore, the claims are enabled. In light of the amendments and remarks provided herein, Applicants respectfully request that this rejection be withdrawn.

#### ***35 U.S.C. §112 (second paragraph)***

Claims 20-21 were rejected as being indefinite. Applicants disagree.

The Office has rejected these claims alleging that the phrase "cold storage" is indefinite. To expedite prosecution Applicants have amended all of the claims to be directed to pome fruit at approximately 35°F (claims 15-19), or methods that include storing pome fruit at approximately 35°F (claims 20-24). In view of the amendments made and remarks provided, Applicants believe this rejection has been overcome and respectfully requests that it be withdrawn.

**35 U.S.C. §103(a)**

Claims 15-24 were rejected as being unpatentable over Shillington *et al.* (U.S. 3,533,810) in view of the combination of Gross (U.S. 3,071,474) and methyl anthranilate by [www.thegoodscentcompany.com](http://www.thegoodscentcompany.com). Applicants disagree.

As mentioned above, Applicants have amended the pending independent claims to be directed to compositions including pome fruit at approximately 35°F (hereinafter referred to as a “cold pome fruit”), as well as methods that include storing pome fruit at approximately 35°F. None of the references teach a cold pome fruit having a grape flavor. Moreover, none of the references teach a method of dipping a post-harvest pome fruit having an exocarp, a pericarp and a mesocarp, in a grape flavoring admixture and storing the fruit at approximately 35°F.

Fruit treated with methyl anthranilate that is stored in the cold (see *e.g.* page 5, lines 11-16; page 5 lines, 23-28; and page 12 lines, 17-19 of the specification) have a longer lasting grape flavor than treated fruit that is stored at room temperature.

The Shillington *et al.* reference discloses a method of decreasing the susceptibility of fruits and vegetables to deterioration from bacteria, fungi, and other microorganisms (column 1, line 34). The Gross reference describes collecting and extracting flavor components from, among other things, grapes. Neither of these references alone, or in combination, teach, suggest or render the currently claimed compositions and methods obvious.

**35 U.S.C. §103(a)**

Claims 15-24 were rejected as being unpatentable over Weaver (U.S. 3,669,664) in view of Kare (US 2,967,128), Michael (U.S. 3,427,167) and Gross (U.S. 3,071,474). Applicants disagree.

As described above, the only independent claims that are presently pending have been amended to more clearly describe the subject matter. The only reference cited by the examiner relating to temperature is Weaver. Weaver mentions exposing food to a “migrator” in a chamber at 40-70°F. During the exposure period the migrator transfers its beneficial taste through the air in the chamber. The specific examples of exposure of pome fruits, however, are all at 70°F (see examples 6, 7, 12 and 13 in Weaver). Weaver does not teach using methyl anthranilate as provided in the present claims and Weaver does not teach dipping the fruit as provided in claims 20-24.

To make up for the deficiencies of Weaver, the Office has chosen to rely upon Kare which teaches applying methyl anthranilate as a bird repellent. Therefore, fruit that is treated as described by Kare would most likely be at ambient temperature due to the fact that the purpose of the treatment is to deter birds. Similarly, Michael teaches at best that methyl anthranilate is NOT a good compound for imparting grape flavor to drinks and fails to teach a grape flavored post harvest pome fruit. Gross does not make up for the deficiencies of the other three references because Gross merely describes collecting and extracting flavor components from, among other things, grapes.

The Office has pieced these references together, the most recent one of them being over 36 years old, based upon an assertion that one of skill in the art would be motivated to connect the references to encourage healthier eating habits for children. This lag in time raises the question of why someone of skill in the art didn't develop the claimed subject matter. Applicants assert that the answer to that question is that one of ordinary skill in the art would not have been motivated to take a chemical used as a bird repellent (Kare) and that was shown to NOT provide good flavor for drinks (Michael), and use it in a process involving transfer of flavor through air to food (Weaver) to arrive at the claimed product and process. Applicants' assertion is further supported by the commercial success of the product.

The Office did not find Applicants prior submission of evidence of commercial success persuasive because it questioned whether the success was derived from marketing efforts rather than public recognition of the uniqueness of the product. Applicants assert that there has been continued success of the product even in light of a very minimal marketing effort. The accompanying declaration from Todd Snyder describes how sales continue to be strong in spite of the fact that Snyder LLC and its manufacturing licensees only spent \$33,051 for marketing during the 2007/2008 sales season.

In light of the remarks, claim amendments, and declaration showing commercial success Applicants believe that the 35 U.S.C. §103(a) rejections have been overcome and Applicants respectfully request that these rejections be withdrawn.

**Conclusion**

Based on the forgoing amendments and remarks, Applicants believe the claims are in a condition for allowance and notification to this effect is requested. If the Examiner believes that there are any remaining issues outstanding, please contact the undersigned prior to the issuance of the next Office action. It is believed that a brief discussion of the merits of the present application may expedite prosecution.

Respectfully submitted,

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